IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. GERVAIS (KEN) NGOMBWA, Defendant.	No. 14-CR-123-LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, stipulations of the parties and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. The fact that an interpreter is being used in this trial is not evidence.
4. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
5. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
6. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents and objects were referred to but were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 7

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached."

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

INSTRUCTION NO. 8

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

INSTRUCTION NO. 9

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 10

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 11

The Indictment in this case charges the defendant with four different crimes.

First, in Count 1, the Indictment charges the defendant with procuring or attempting to procure, contrary to law, the naturalization of a person.

Second, in Count 2, the Indictment charges the defendant with procuring, obtaining, applying for or attempting to procure or obtain citizenship or naturalization for himself or another person to which such person was not entitled.

Third, in Count 3, the Indictment charges the defendant with conspiring with one or more persons to commit the offense charged in Count 1.

Fourth, in Count 4, the Indictment charges the defendant with making a false material statement in a matter within the jurisdiction of the Department of Homeland Security.

The defendant has pleaded not guilty to these charges.

As I told you at the beginning of the trial, the Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately and return a separate verdict for each count.

There is no burden upon the defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial.

INSTRUCTION NO. 12

Count 1 of the Indictment charges the defendant with procuring or attempting to procure, contrary to law, the naturalization of a person.

This offense has five elements, which are:

One, the defendant knowingly made one or more false statement(s);

Two, concerning a material matter;

Three, for the purpose of procuring or attempting to procure the naturalization of himself or another person;

Four, contrary to law; and

Five, the defendant knew that the statement or statements were false when he made them.

If the government proves all five elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1. Otherwise, you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NO. 13

Count 2 of the Indictment charges the defendant with procuring, obtaining, applying for, or attempting to procure or obtain citizenship or naturalization for himself or another person to which such person was not entitled.

This offense has five elements, which are:

One, the defendant knowingly made one or more false statements(s);

Two, concerning a material matter;

Three, for the purpose of procuring or attempting to procure the naturalization of himself or another person;

Four, to which such person was not entitled; and

Five, the defendant knew that the statement or statements were false when he made them.

If the government proves all five elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 2. Otherwise, you must find the defendant not guilty of the crime charged under Count 2.

INSTRUCTION NO. 14

Count 3 of the Indictment charges the defendant with conspiracy. It is a crime for two or more people to agree to commit a crime.

This offense has four elements, which are:

One, beginning in about March 1998, and continuing until at least June 20, 2006, two or more persons reached an agreement or came to an understanding to commit the crime alleged in Count 1 of the Indictment, that is, to procure or attempt to procure the naturalization of one or more persons contrary to law;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time the agreement or understanding was first reached or at some later time while it was still in effect;

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding; and

Four, while the agreement or understanding was in effect, a person who had joined in the agreement knowingly did one or more of the following acts for the purpose of carrying out or carrying forward the agreement:

a. On March 11, 1998, the defendant was interviewed by a UNCHR resettlement consultant at the Mkugwa, Tanzania, refugee camp near Kibondo, Tanzania.

b. On about July 3, 1998, the defendant signed an INS Form I-590, "Registration for Classification as a Refugee."

c. On about July 3, 1998, Aaron Bizumwami falsely claimed as part of the JVA/Kenya Resettlement Program that the defendant was his nephew.

d. Mukakabanda falsely claimed on the INS Form G-325A that her mother was deceased.

(CONTINUED)

e. On about July 3, 1998, Antoinette Mukakabanda signed a completed INS Form I-590, titled "Registration for Classification as Refugee."

f. Mukakabanda falsely claimed Juvenary Hakizimana was her child.

g. Mukakabanda failed on the form to report having a child named Kabanda.

h. On July 7, 1998, the defendant was interviewed as part of the JVA/Kenya Resettlement Program.

i. On July 20, 1998, the defendant was interviewed by the INS, Nairobi, Kenya Officer-in-Charge.

j. On July 20, 1998, Antoinette Mukakabanda was interviewed by the INS, Nairobi, Kenya Officer-in-Charge.

k. Mukakabanda failed to report in the interview that Juvenary Hakizimana was not her child, but had another mother.

l. Mukakabanda failed to report in the interview having a child named Kabanda.

m. On July 20, 1998, Faustine Ngayaberua was interviewed by the INS, Nairobi, Kenya Officer-in-Charge.

n. Ngayaberua claimed his uncle had been the prime minister of Rwanda between July 1994 and October 1995.

o. On July 20, 1998, Gilbert Mugarula was interviewed by the INS, Nairobi, Kenya Officer-in-Charge.

p. Mugarula claimed his uncle had been the prime minister of Rwanda between July 1994 and October 1995.

(CONTINUED)

q. On July 20, 1998, Juvenary Hakizimana was interviewed by the INS, Nairobi, Kenya Officer-in-Charge.

r. Hakizimana claimed his uncle had been the prime minister of Rwanda between July 1994 and October 1995.

s. On about December 1998, the defendant and his family established residence in Cedar Rapids, Iowa.

t. On about September 25, 2000, the defendant signed, and thereafter submitted to U.S. immigration officials, an "Application to Register Permanent Resident or Adjust Status," INS Form I-485.

u. On about September 25, 2000, the defendant signed, and thereafter submitted to U.S. immigration officials, an "Application to Register Permanent Resident or Adjust Status," INS Form I-485, on behalf of Louise Usanase.

v. On about September 25, 2000, the defendant signed, and thereafter submitted to U.S. immigration officials, an "Application to Register Permanent Resident or Adjust Status," INS Form I-485, on behalf of Josiane Uwera.

w. On about September 25, 2000, the defendant signed, and thereafter submitted to U.S. immigration officials, an "Application to Register Permanent Resident or Adjust Status," INS Form I-485, on behalf of Grevais Murwanashyaka.

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x. On about February 2, 2001, documents were sent by United States mail from Cedar Rapids, Iowa, to the INS Nebraska Service Center in furtherance of the defendant's and others' applications to adjust to permanent resident status.

y. On or about May 15, 2003, in Cedar Rapids, Iowa, the defendant signed and certified "under penalty of perjury" an Application for Naturalization, INS Form N-400.

z. On about November 22, 2003, the defendant's, Mukakabanda's, and other INS Forms N-400 were mailed from Cedar Rapids, Iowa, to the INS Nebraska Service Center in Omaha, Nebraska.

aa. On about May 12, 2004, Mukakabanda falsely claimed in an interview with an INS officer that she had no children other than those listed on her completed INS Form N-400.

bb. On about July 9, 2004, Antoinette Mukakabanda took the oath of citizenship and became a naturalized citizen.

cc. On about July 9, 2004, Faustine Ngayabernba took the oath of citizenship and became a naturalized citizen. As part of the process of becoming a citizen, he changed his name to Faustine Banner.

dd. On about July 9, 2004, Gilbert Mugarula took the oath of citizenship and became a naturalized citizen. As part of the process of becoming a citizen, he changed his name to Gilbert Grant.

ee. On about July 9, 2004, Juvenary Hakizimana took the oath of citizenship and became a naturalized citizen. As part of the process of becoming a citizen, he changed his name to Jesse Juvy Hakizimana.

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INSTRUCTION NO. 14 (Cont'd)

ff. On about July 9, 2004, Josiane Uwera took the oath of citizenship and became a naturalized citizen.

gg. On about November 19, 2004, the defendant Gervais Ngombwa took the oath of citizenship and became a naturalized citizen. As part of the process of becoming a citizen, he changed his name to Ken Ngombwa.

hh. On about June 20, 2006, Antoinette Uwangombwa took the oath of citizenship and became a naturalized citizen.

ii. On about June 20, 2006, Louise Usanase took the oath of citizenship and became a naturalized citizen.

jj. On about June 20, 2006, Grevais Murwanashyaka took the oath of citizenship and became a naturalized citizen.

If you unanimously find each of these elements has been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged in Count 3. Otherwise, you must find the defendant not guilty of the crime charged in Count 3.

INSTRUCTION NO. 15

Count 4 of the Indictment charges the defendant with making a false or fraudulent material statement in a matter within the jurisdiction of the Department of Homeland Security.

This offense has five elements, which are:

One, on or about October 15, 2014, the defendant knowingly and intentionally stated he had never claimed Faustin Twagiramungu was his brother;

Two, the statement was false and/or fraudulent;

Three, the statement concerned a material fact;

Four, the statement was made about a matter within the jurisdiction of the Department of Homeland Security; and

Five, the defendant knew it was untrue when he made the statement.

If the government proves all five elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 4. Otherwise, you must find the defendant not guilty of the crime charged under Count 4.

INSTRUCTION NO. 16

In order to fall within a federal agency's jurisdiction, it is not necessary that the false statement be presented directly to a federal agency; it is sufficient if the statement is made in some intended relationship to a matter in which a federal agency has the power to act.

The defendant need not have actual knowledge that he is making a statement within the jurisdiction of a federal agency.

INSTRUCTION NO. 17

A statement is "false" if it was untrue when made.

A statement is "fraudulent" if the defendant made it with the intent to deceive.

A "material fact" is a fact that would naturally influence or is capable of influencing a decision of the agency. Whether a fact is "material" does not depend on whether the agency was actually deceived or misled.

INSTRUCTION NO. 18

The government is not required to prove that the defendant knew that his acts or statements were unlawful. An act is done "knowingly" if a defendant is aware of the act and did not act through ignorance, mistake or accident. You may consider evidence of the defendant's acts and words, along with other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 19

A person is not eligible under the law for admission to the United States as a refugee if they have committed a crime of moral turpitude.

You are instructed that the term "crime involving moral turpitude" includes crimes involving dishonesty, or the intent to deceive or defraud. Intentionally concealing criminal behavior and making false statements to government officials with the intent to mislead them, regardless of materiality, also involve moral turpitude.

INSTRUCTION NO. 20

You may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, because a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

With respect to the conspiracy alleged in Count 3 of the Indictment, and on which you have been instructed in Instruction No. 14, you are further instructed as follows:

Element One

Element One requires that two or more people reach an agreement to commit the crime identified in Count 3. For you to find that the government has proved a conspiracy, you must unanimously find that there was an agreement to commit the object of the conspiracy. Because Count 3 only charges one object (to procure or attempt to procure the naturalization of one or more persons contrary to law), you must unanimously agree that was the purpose of the conspiracy. If you are unable to unanimously agree, you cannot find the defendant guilty of Count 3.

The agreement between two or more people to commit the alleged object of the conspiracy does not need to be a formal agreement or be in writing. A verbal or oral understanding can be sufficient to establish an agreement. It does not matter whether the crime alleged as the object of the conspiracy was actually committed or whether the conspirators actually succeeded in accomplishing their unlawful plan.

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INSTRUCTION NO. 20 (Cont'd)

The agreement may last a long time or a short time. The members of an agreement do not all have to join it at the same time. You may find that the defendant joined the agreement even if you find he did not know all of the details of the agreement. The government is not required to prove that the conspiracy existed during the entire period of time alleged in the Indictment, or that the defendant was a member of the conspiracy for the entire period of time alleged in the Indictment. What the evidence must show is that a conspiracy existed, and that the defendant joined in the conspiracy at some time during the period alleged in the Indictment.

Element Two

Element Two requires that the defendant voluntarily and intentionally joined the agreement.

If you have determined that two or more people reached an agreement to commit the crime alleged as the object of the conspiracy, you must next decide whether the defendant voluntarily and intentionally joined that agreement, either at the time it was first formed or some later time while it was still in effect.

In deciding whether the defendant joined the agreement, you may consider only the acts and statements of the defendant. A person joins an agreement to commit an offense by voluntarily and intentionally participating in the unlawful plan with the intent to further it. It is not necessary for you to find that the defendant knew all the details of the unlawful plan. Nor is it necessary for you to find that the defendant reached an agreement with every person you determine was a participant in the agreement.

(CONTINUED)

INSTRUCTION NO. 20 (Cont'd)

Evidence that a person was present at the scene of an event, or acted in the same way as others or associated with others, does not, alone, prove that the person joined a conspiracy. A person who has no knowledge of a conspiracy, but who happens to act in a way that advances the purpose of the conspiracy, does not thereby become a member. A person's mere knowledge of the existence of a conspiracy, mere knowledge that an objective of a conspiracy was being considered or attempted or mere approval of the purpose of a conspiracy, is not enough to prove that the person joined in a conspiracy.

A person may be a member of the agreement even if the person does not know all of the other members of the agreement or the person agreed to play only a minor part in the agreement.

Element Three

Element Three requires that the defendant knew the purpose of the agreement at the time the defendant joined the agreement.

A person knows the purpose of the agreement if he is aware of the agreement and does not participate in it through ignorance, mistake, carelessness, negligence or accident. It is seldom, if ever, possible to determine directly what was in the defendant's mind. Thus, the defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

It is not enough that the defendant and other alleged participants in the conspiracy simply met, discussed matters of common interest, acted in similar ways or perhaps helped one another. The defendant must have known of the existence and purpose of the agreement. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

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INSTRUCTION NO. 20 (Cont'd)

Element Four

Element Four requires that one of the persons who joined the agreement committed an "overt act" for the purpose of carrying out or carrying forward the agreement.

The defendant does not have to personally commit an "overt act" in furtherance of the agreement, know about it or witness it. It makes no difference which of the participants in the agreement did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

Further, the act done in furtherance of the agreement does not have to be an unlawful act. The act may be perfectly innocent in itself.

It is not necessary that the government prove that more than one act was done in furtherance of the agreement. It is sufficient if the government proves one such act; but in that event, to return a verdict of guilty, you must all agree as to which act or acts were committed.

INSTRUCTION NO. 21

You will note that the Indictment charges that the offenses were committed "beginning in at least," "continuing . . . through about," "between at least" and "on about" certain dates or years. The government need not prove with certainty the exact date or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 22

You must make your decisions based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back lengthy testimony.

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 23

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because each of your verdicts—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decisions, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Fifth, your verdicts must be based solely on the evidence and on the law that I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NO. 24

Attached to these instructions you will find the Verdict Forms and Interrogatory Form. These are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms and Interrogatory Form must be the unanimous decisions of the Jury.

You will take the Verdict Forms and Interrogatory Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and Interrogatory Form, your foreperson will fill out the Verdict Forms and Interrogatory Form, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Forms and Interrogatory Form in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the Jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms and Interrogatory Form in accord with the evidence and these instructions.

January 14, 2016
Date

Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa